

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
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Denver, Colorado 80257
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Elisabeth A. Shumaker
Clerk of Court

November 30, 2010

Douglas E. Cressler
Chief Deputy Clerk

Mr. Timothy R. Payne
Mr. Randy A. Bauman
Mr. Robert Spencer Jackson
Office of the Federal Public Defender
Western District of Oklahoma
215 Dean A. McGee Avenue, Suite 109
Oklahoma City, OK 73102

RE: 10-6268, Matthews v. Jones, et al.
Dist/Ag docket: 5:10-cv-00141-F

Dear Counsel:

This appeal was docketed today. Copies of the Tenth Circuit Rules, effective January 1, 2011, and the Federal Rules of Appellate Procedure, effective December 1, 2010, may be obtained by contacting this office or by visiting our website at <http://www.ca10.uscourts.gov>. You may also obtain a copy of the rules by calling this office. Effective March 18, 2009, counsel must also comply with the court's new General Order, which requires all counsel to file pleadings via the court's Electronic Case Filing system (ECF). You may find the order and information on registering for and using ECF on the court's website. We invite you to contact us with any questions you may have about our operating procedures. Please note that all court forms are now available on the court's web site. Outlined below are some of the requirements for prosecuting this appeal.

Attorneys must complete and file an entry of appearance form within 14 days of the date of this letter. *See* 10th Cir. R. 46.1(A). Appellant's failure to enter an appearance may cause the appeal to be dismissed. An appellee who fails to enter an appearance may not receive notice or service of orders.

Although attorneys who file a notice of appeal have technically entered an appearance, and may not withdraw without the court's permission, counsel must still file a separate entry of appearance form. For criminal appeals, please note the court will require trial counsel to continue the representation whether retained or appointed, even if you did not sign the notice of appeal. *See* 10th Cir. R. 46.3(A). This continuity of counsel ensures that any criminal defendant who wishes to appeal has that appeal perfected.

Generally, the court will not allow counsel to withdraw until the docketing statement is filed, necessary transcripts are ordered, and the designation of record is submitted. If there is an issue regarding the defendant's eligibility for the appointment of counsel, an appropriate motion must be filed in the district court. *See* 10th Cir. R. 46.4(A).

Please note, because of the time sensitivity in this matter, all deadlines may be subject to change.

You are required to file a docketing statement within 14 days of filing the notice of appeal. If you have not yet filed that pleading, you should do so within 14 days of the date of this letter. Please note that under local rule 3.4(C), the appellant is not limited to the issues identified in his docketing statement and may raise other appropriate issues in the opening brief. In addition to the docketing statement, all transcripts must be ordered within 14 days of the date of this letter. If no transcript is necessary, you must file a statement to that effect.

The docket fee was not paid to the district clerk as required by Fed. R. App. P. 3(e). The docket fee must be paid to district clerk within 14 days from the date of this letter. If the docket fee is not paid within that time or a motion for leave to proceed without prepayment of fees is not filed, the appeal may be dismissed without further notice, *see* 10th Cir. R. 3.3(B). Dismissal of the appeal will not relieve appellant or appellant's counsel of the obligation to pay fees and costs under 28 U.S.C. 1913.

Under the Prisoner Litigation Reform Act prisoners are required to pay the full amount of the filing fee. *See* 28 U.S.C. 1915(b)(1). The court must assess, and have the warden collect, partial filing fees. There are other requirements of prisoners under the statute. They include, but are not limited to, providing a certified copy of your trust fund statement for the preceding six months, and consenting to the collection of the funds from your account by your custodian.

As appointed counsel, you are required to file a designation of record with the district court. You must also file a copy with this court. Under 10th Cir. R. 10.2(A)(1), that designation must be filed within 14 days of filing the notice of appeal. If you have not done so already, you should file the designation immediately.

Under local rule 10.2(A)(2), the government may file an additional designation within 14 days after service of appellant's designation. Once that time passes, the district court will complete assembly of the record. The district court clerk will transmit the record to this court and will notify the parties. *See* Fed. R. App. P. 11(b); 10th Cir. R. 11.2(A).

The court will issue an order establishing a briefing schedule. We will notify you when that happens. Likewise, at that time, the Circuit will appoint you formally under the Criminal Justice Act. This formality ensures that you can receive compensation under the Criminal Justice Act for your efforts in this appeal.

With regard to briefing, please note that you must satisfy all the requirements of Fed. R. App. P. 28 and 32. In addition, please review Tenth Circuit local rules 28.1, 28.2, 32.1 and 31.3. Seven copies of briefs must be provided to the court within two days of filing via the court's Electronic Case Filing system. *See* 10th Cir. R. 31.5 and the Court's General Order of March 18, 2009. Motions for extension of time to file briefs must comply with 10th Cir. R. 27.3, 27.4(B), 27.4(E), where applicable, and 27.4(F). These motions are not favored.

Thank you very much for your service to the court in your role as appointed counsel. If you are unfamiliar with the court's procedures or have questions, please call this office.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in cursive script, reading "Elisabeth A. Shumaker", followed by a horizontal line.

Elisabeth A. Shumaker
Clerk of the Court

EAS/as

cc: Stephen J. Krise
Martha Ruth Kulmacz
Gregory T Metcalfe